

Members

Sen. Patricia Miller, Chairperson
Sen. Robert Meeks
Sen. Ryan Mishler
Sen. Sue Errington
Sen. Vi Simpson
Sen. Connie Sipes
Rep. Charlie Brown
Rep. William Crawford
Rep. Peggy Welch
Rep. Timothy Brown
Rep. Suzanne Crouch
Rep. Don Lehe



SELECT JOINT COMMISSION ON MEDICAID OVERSIGHT

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Al Gossard, Fiscal Analyst for the Commission
Kathy Norris, Fiscal Analyst for the Commission
Casey Kline, Attorney for the Commission

Authority: IC 2-5-26

MEETING MINUTES¹

Meeting Date: October 29, 2007
Meeting Time: 9:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Senate Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 5

Members Present: Sen. Patricia Miller, Chairperson; Sen. Robert Meeks; Sen. Ryan Mishler; Sen. Sue Errington; Sen. Vi Simpson; Sen. Connie Sipes; Rep. Charlie Brown; Rep. William Crawford; Rep. Peggy Welch; Rep. Don Lehe.

Members Absent: Rep. Timothy Brown; Rep. Suzanne Crouch.

Sen. Patricia Miller, chairperson, called the fifth meeting of the Select Joint Commission on Medicaid Oversight to order at 10:15 a.m.

Incontinence Supplies - Statewide Contracting Issues

Mr. Bill Lego from the Dr. Aziz Pharmacy stated that he was opposed to the request for proposal (RFP) that had been issued by the Office of Medicaid Policy and Planning (OMPP). Mr. Lego questioned why OMPP was requesting a four-year contract rather than a shorter-term trial. He was also concerned about his patients who were special needs children and require special-order products, but might be excluded from these products under this contract. Ultimately, he said, some kids may be sent to the hospital to get what they need, but at a higher cost to the state. Mr. Lego stated that he often delivers products to his patients' homes and questioned whether they would receive the same level of service from an out-of-state mail order

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

company. He added that it was his understanding that under the RFP specifications, the only way to get a product changed was through a nurse's home visit.

Mr. Lego questioned why OMPP is willing to go out of state for a vendor, and he claimed that the state designed the RFP to effectively exclude small companies from competing for the contract. Mr. Lego also stated that a mail order company isn't always the most efficient in that often the company will send the maximum quantity of the product allowed under state rules rather than only the amount that the patient needs. Mr. Lego also distributed copies of letters sent on behalf of his pharmacy and opposing the change in the system (Exhibit #1).

Ms. Kate McMullin, a grandmother of Sarah, a 13-year-old accompanying Ms. McMullin, spoke of Sarah and her health problems and their experiences with Mr. Lego, their current product supplier. Sarah has undergone 37 major surgeries from spina bifida resulting in an augmented bladder. She stated that sending a nurse out to the home who doesn't know the child is not workable. She added that Sarah requires a special soft catheter, which not only is not commonly stocked in drug stores, it is also not commonly stocked in hospitals; however, her supplier keeps them in stock for Sarah. Ms. McMullin is concerned that she would not receive the same level of service from a mail order company.

Dr. Jeff Wells, Director of OMPP, provided a slide presentation on the process for contracting of incontinence supplies (Exhibit #2). Dr. Wells described the current system for Medicaid members and the anticipated impact on members from the new RFP. He outlined the time line for the RFP process, with an expected awarding of the contract in mid November. He also refuted what he believes are myths surrounding the RFP process.

In response to a question as to the possibility of drafting a letter or recommendation to the executive branch to delay the procurement process, Sen. Miller stated that under the current Legislative Council resolution on committee procedures, the Commission may only make recommendations to the Legislative Council, pass a legislative recommendation to the entire General Assembly, or any individual legislator may write a letter to the executive branch agencies.

EDS and MCO Providers' Claims Reports and Access Reports

Ms. Lola Jordan, EDS, distributed the Indiana Health Coverage Program (IHCP) update (Exhibit #3) and described the report. The report includes dollars paid out; fee-for-service claims paid and denied, adjudication days, number of enrolled and participating providers, and the number of recipients. The statistics are for FY 2005, FY 2006, FY 2007, and year-to-date data for FY2008. Operational statistics provided were for claim and call center volume, claim inventories, and publications provided, as well as IHCP highlights covering the Healthy Indiana Plan, Care Select Program, and the upcoming, one-time payment to providers.

Additional documents distributed included a summary of data for Anthem, MDwise, and MHS, the three Medicaid managed care organizations (MCOs). The document was entitled *Select Physical Health Measures for Dashboard Report for Q3 2006- Q2 2007 Hoosier Healthwise Program* (Exhibit #4). In addition, a series of maps showing the geographical distribution of MDwise providers was distributed (Exhibit #5).

Discussion of Preliminary Bill Drafts

The consideration of legislative recommendations was taken out of order because of time constraints. The following bill drafts were considered.

- PD 3333 -

PD 3333 repeals the provision that provides for the expiration of the Select Joint Commission on Medicaid Oversight on December 31, 2008 (Exhibit #6).

The language of PD 3333 was further amended to add to the duties of the Select Joint Commission on Medicaid Oversight the determination of whether a managed care organization that has contracted with the state to provide Medicaid services has performed the terms of the contract. The amendment was adopted by consent.

Upon proper motion and second, the Commission voted 10 to 0 in favor of recommending PD 3333, as amended, to the General Assembly. (See Exhibit #7 for the complete language.)

- PD 3235 -

PD 3235 specifies that OMPP, a managed care organization that contracts with OMPP under the state's Medicaid program, and a person that contracts with the managed care organization must meet certain requirements concerning payment and denial of claims. (See Exhibit #8.)

Upon proper motion and second, the Commission voted 10 to 0 in favor of recommending PD 3235 to the General Assembly.

- PD 3389 -

PD 3389 prohibits the State Department of Health from approving the certification of new or converted comprehensive care beds for participation in the Medicaid program until July 1, 2011, unless the state comprehensive care bed occupancy rate is more than 95% in health facilities. The bill allows for an exception for replacement beds if specified requirements are met. (See Exhibit #9.)

Sen Miller stated that PD 3389 is being proposed by the administration. Mr. Sid Norton, Chief Financial Officer of FSSA, presented background information for the proposal (Exhibit #10). Mr. Norton stated the following: (1) In spite of demographic trends and the aging population, nursing facility utilization is decreasing in the general population and with the Medicaid program; (2) All but a very few states utilize some mechanism to exert direct control over nursing facility bed supply, while most states are increasing their investment in home- and community-based services, which decreases demand for nursing facility care; and (3) An emerging trend is utilization of risk-based managed care or enhanced primary care case management for the aged and disabled population, including those eligible for nursing facility care.

Mr. Norton described the proposed legislation as (1) freezing the number of Medicaid-certified beds at the current level; (2) allowing for replacement and transfer of beds; (3) requiring any new beds to be offset by a corresponding reduction in beds; and (4) keeping the moratorium in place until 2011 or until the statewide occupancy rate reaches 95%.

Mr. Jim Leich, Indiana Association of Homes and Services for the Aging, stated that his organization was supportive of the approach reflected in the bill draft and supportive of the ability to buy and sell beds.

Mr. Mark Scherer, Indiana Health Care Association, stated that his association is neutral on the proposal, citing potential legal problems with the concept.

Mr. Bob Decker, Hoosier Owners and Providers for the Elderly, expressed support for the proposal, emphasizing that what the state wants to do is control supply of nursing facility beds while transitioning to home- and community-based services, and the market will determine the value of a bed.

Mr. Randy Fearnow, Krieg DeVault, LLP, and representing American Senior Communities, stated that American Senior Communities is opposed to the proposal, believing that the moratorium on the construction or conversion of Medicaid-certified beds will stifle competition in the nursing home industry, impede the development of modern facilities, and would do little, if anything, to control Medicaid spending. (See Exhibit #11 for written testimony.)

The Commission adopted by consent a proposal to amend PD 3389 to exempt Continuing Care Retirement Communities from the requirements of the bill.

Upon final consideration, PD 3389 failed for lack of a motion.

Approval of Final Report

Upon proper motion and second, the final report of the Commission, with the inclusion of today's testimony and actions, was approved by a vote of 9 to 0.

Seals Ambulatory Services

Mr. Randy Seals, representing the Indiana Ambulance Association, an association of municipally and privately owned ambulance services, asked the Commission for help regarding two issues: (1) equitable Medicaid compensation for ambulance and EMS services provided to Medicaid beneficiaries and (2) direct payment from health insurance organizations to ambulance service providers. Mr. Seals requested an increase in reimbursement rates as established by the Centers for Medicare and Medicaid Services (CMS) and with reimbursement equal to the cost of providing the service. Currently, ambulance services are paid by the Medicaid program as transportation services with a base rate and mileage. (See Exhibit #12 for Mr. Seals' written testimony.)

Responding to Mr. Seals' testimony, Dr. Wells, Director of OMPP, stated that he met with one of the ambulance associations in April or May, and the ambulance providers would be included with the other Medicaid transportation providers in the forthcoming reimbursement rate increase. The total amount of the increase would be about \$1 M statewide and would probably occur in the first quarter of CY 2008.

Sen. Miller, due to time constraints, requested that Dr. Wells briefly report on the remaining agenda items.

HEDIS Reports

Dr. Wells provided a document entitled *Hoosier Healthwise HEDIS 2007 Findings (Comparison of Measurement Year 2006 MCO HEDIS Performance to OMPP Targets and NCQA Median for Selected Measures)*. (See Exhibit #13.) The Healthcare Effectiveness Data and Information Set (HEDIS) reportedly is a widely used set of performance measures in the managed care industry, developed and maintained by the National Committee for Quality Assurance (NCQA).

In response to a question from Rep. Crawford regarding whether CMS requires that we do comparative analysis on EPSDT (Medicaid Early Periodic Screening, Diagnosis, and Treatment program), Dr. Wells distributed a letter sent to Rep. Crawford providing information on previously asked questions concerning the following: (1) EPSDT; (2) Children's Health Insurance Program state plan amendment; and (3) Mail Order Pharmacies. (See Exhibit #14.)

Update on Indiana Compliance with the Federal Deficit Reduction Act

Dr. Wells presented a report on Indiana's compliance with the federal Deficit Reduction Act (DRA) as of October 29, 2007. (Exhibit #15.)

Review of the State Sources of Medicaid Funding

Dr. Wells provided a document entitled *Overview of CMS' Medicaid Cost Limitations Rule: Impact on Indiana's Healthcare Funding*. (See Exhibit #16.)

Medicaid Coordination of Benefits Study

Dr. Wells stated that SEA 566-2007 requires OMPP to examine Medicaid claims to determine and recover claims that were eligible for payment by third parties other than Medicaid. If the study determines that at least 1% of the claims were payable by a third party, OMPP is required to implement a procedure to improve the coordination of benefits between Medicaid and other third-party payers. Dr. Wells stated that the issue of third party payers was highlighted in the federal Deficit Reduction Act of 2005. He added that approximately 11% to 12% of Medicaid recipients are estimated to have third-party payers other than Medicaid. Other states' data suggest that perhaps up to 20% may have third-party payers. Dr. Wells stated that EDS has subcontracted with HMS for cost recovery. He added that it is difficult to find and discover, but there are a lot of opportunities in this area.

Other Business

Dr. Wells also distributed a document in response to a previous request from Sen. Miller illustrating the payment calculation process for the FY 2007 physician bonus payment. (See Exhibit #17.)

Commission members inquired about the progress of OMPP in increasing the eligibility threshold in the Children's Health Insurance Program (CHIP) to 300% of the federal poverty level in compliance with the statutory requirement enacted in HEA 1678-2007 and in light of the CMS policy that says no state can go to 300% unless a certain percentage of the under-200% population is covered. Dr. Wells stated that it often requires three to six months to get approval, and with the national debate ongoing, Dr. Wells stated that it was the administration's desire to wait before taking further action. He added that the administration was also concerned with getting more children signed up at the lower income levels. Some members of the Commission expressed the desire that the state increase the threshold to a level between 200% and 300% in the spirit of the law.

In response to a question on the progress of the Family Planning Waiver, Dr. Wells stated that OMPP would be submitting the waiver to CMS within the next 30 days.

There being no further business to conduct, the meeting was adjourned at 12:40 p.m.